

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Requests for Emergency Temporary	)	CC Docket No. 96-262
Relief of the Minnesota CLEC Consortium	)	
and the Rural Independent Competitive	)	
Alliance Enjoining AT&T Corp. from)		
Discontinuing Service Pending	)	
Final Decision	)	
_____	)	

**COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION**

The United States Telecom Association (USTA),<sup>1</sup> through the undersigned and pursuant to the Public Notice<sup>2</sup> released by the Federal Communications Commission (FCC) in the above-referenced docket, hereby comments on the requests for temporary emergency relief (Requests) of the Minnesota CLEC Consortium (MCC) and the Rural Independent Competitive Alliance (RICA). The emergency relief sought by MCC and RICA is directly related to an issue currently

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<sup>1</sup>The United States Telecom Association, formerly the United States Telephone Association, is the nation's oldest trade organization for the local exchange carrier industry. USTA represents more than 1200 telecommunications-related companies worldwide. Its carrier members provide a full array of voice, data and video services over wireline and wireless networks. USTA members support the concept of universal service and are leaders in the deployment of advanced telecommunications capabilities to American and international markets.

<sup>2</sup>Requests for Emergency Temporary Relief of the Minnesota CLEC Consortium and the Rural Independent Competitive Alliance Enjoining AT&T Corp. From Discontinuing Service Pending Final Decision, CC Docket No. 96-962, DA 00-1067, Public Notice (rel. May 15, 2000).

before the FCC in a pending rulemaking proceeding.<sup>3</sup> The issue raised in the Further Notice Proceeding that is relevant to the Requests concerns AT&T's ability to lawfully withdraw its interexchange services from the customers of MCC's and RICA's members based on AT&T's unilateral determination that the tariffed interstate access rates charged by MCC's and RICA's members are too high.

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<sup>3</sup>See Access Charge Reform, CC Docket No. 96-262, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 14221 (1999) (Further Notice Proceeding).

USTA filed comments and reply comments in the Further Notice Proceeding and concluded that statutes and regulations exist that prevent AT&T from unilaterally withdrawing its interexchange services from the customers of LECs targeted by AT&T (be they CLECs or incumbent local exchange carriers).<sup>4</sup> Further, USTA concluded that it would be contrary to the public interest to permit AT&T to forgo FCC or judicial review of a tariffed LEC access rates and punish innocent end users by unilaterally denying them access to its interexchange services because AT&T, alone, determined the LEC's access rates to be too high.<sup>5</sup> USTA supports the Requests to the extent that they seek preservation of the pre-termination *status quo ante* pending FCC action in the Further Notice Proceeding and believes that MCC and RICA have demonstrated that the limited injunctive relief sought is justified. It is, in USTA's view, implausible that "neither the present nor future public convenience and necessity will be adversely affected"<sup>6</sup> if AT&T is permitted to terminate or suspend the interchange of traffic with targeted LECs, in order to force access rate reductions, without first having presented a complaint to the FCC or court of competent jurisdiction for review of the challenged access rates<sup>7</sup> or followed

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<sup>4</sup>See Comments of the United States Telephone Association, filed on October 29, 1999, at pp. 21-26 and Reply Comments of the United States Telecom Association, filed on November 29, 1999, at pp. 14-15. USTA's Comments and Reply Comments are incorporated herein by reference.

<sup>5</sup>Id.

<sup>6</sup>47 U.S.C. § 214(a). See FCC Rule 63.71 (47 C.F.R. § 63.71). RICA asserts that to its "knowledge, AT&T has not provided notice of its unilateral withdrawal of service to any customer, to this Commission, or to any state commission." Request for Emergency Relief of RICA, filed on February 18, 2000, at p. 8. If true, AT&T is in violation of Commission Rule 63.71.

<sup>7</sup>See 47 U.S.C. § 207.

FCC discontinuance of service procedures.<sup>8</sup> USTA urges the FCC to enjoin AT&T from unilaterally withdrawing its interexchange services from the customers of MCC's and RICA's members (or any other LECs similarly situated) until the FCC issues a final decision in the Further Notice Proceeding and AT&T complies with any conditions precedent for the discontinuance of service.

## **DISCUSSION**

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<sup>8</sup>See FCC Rule 63.71.

In its Request for Emergency Relief, RICA asks that the FCC preserve “the *status quo ante* during the pendency of this proceeding [Further Notice Proceeding] rather than allowing AT&T’s precipitous and self-serving actions.”<sup>9</sup> USTA reserves comment on the assertion that AT&T should also be found “apparently liable for forfeitures” as a result of the AT&T conduct documented in the Requests. USTA agrees, though, that AT&T’s actions are, at best, premature and threaten to undermine the integrity of the FCC’s rulemaking process if it is permitted to withdraw service from end user customers before the FCC completes this rulemaking proceeding and determines AT&T’s substantive and procedural obligations under the circumstances presented. Accordingly, and upon the facts presented in the Requests, USTA believes that the FCC should enjoin AT&T from discontinuing its interexchange service offerings at this time. USTA also encourages the FCC to issue a final decision in the Further Notice Proceeding as soon as possible in order to remove carrier and customer confusion and prevent additional harm to customers.

MCC and RICA argue that the relief requested should be grant because they have satisfied the criteria for extraordinary relief set forth in Virginia Petroleum Jobbers Association v. Federal Power Commission<sup>10</sup>:

1. The likelihood of success on the merits;
2. The likelihood that irreparable harm to the requesting party will result in

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<sup>9</sup>Request for Emergency Relief of RICA at pp. 2 and 12.

<sup>10</sup>259 F.2d 921 (D.C. Cir. 1958) (Virginia Petroleum Jobbers).

- the absence of the requested stay;
3. Other interested parties will not be harmed if the stay is granted; and
4. The public interest favors a grant of a stay.<sup>11</sup>

USTA agrees that if this is the appropriate standard to be applied by the FCC in determining whether to grant the requested relief, MCC and RICA have met their burden. AT&T's conduct, as documented by MCC and RICA, is egregious. Despite the conclusion by the FCC that AT&T is non-dominant in the interexchange market, there are clearly locations within the national geographic market where AT&T's position as the nation's largest interexchange carrier allows it to utilize tactics such as those documented in the Requests. AT&T is engaging in this conduct in these particular locations for one simple reason, because it believes it can get away with it with no competitive consequences. More competition in the interexchange market from carriers willing to serve all customers would create a disincentive for AT&T to engage in this type of behavior. Marketplace solutions coupled with the adjudicatory and administrative processes provided for in the Communications Act are the proper vehicles for determining the reasonableness of LEC access rates. USTA believes that the FCC should not countenance AT&T's arbitrary, heavy-handed, self-help action where alternatives exist for challenging the reasonableness of a LEC's access rates, alternatives that hold customers harmless while the carriers adjudicate their dispute. Certainly, AT&T can claim no real harm to itself by having the FCC or a court review a LEC's access rates and continuing to provide interexchange service to end users pending resolution of the dispute.

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<sup>11</sup>Request for Emergency Relief of RICA at p. 5.

USTA does not believe, though, that the standard set forth in Virginia Petroleum Jobbers must be met in order for the requested relief to be granted. Virginia Petroleum Jobbers concerned a request for stay of a decision from an administrative agency. Here, there is no request to hold in abeyance or delay the effectiveness of a final FCC decision. Rather, what is being sought is injunctive action by the FCC to preserve the integrity of a decision yet to be rendered in a proceeding pending before it. USTA believes that on the facts presented by MCC and RICA, the FCC has the authority pursuant to Section 154(i)<sup>12</sup> to grant the limited injunctive relief requested in order to preserve the integrity of its rulemaking process and prevent harm to customers as it considers rules that will best serve the public interest.

## CONCLUSION

On the basis of the foregoing, USTA requests that the limited injunctive relief sought in the Requests be granted and that the FCC expeditiously conclude the Further Notice Proceeding.

Respectfully submitted,

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<sup>12</sup>47 U.S.C. § 154(i).

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**CERTIFICATE OF SERVICE**

I, Robyn L.J. Davis, do certify that on June 14, 2000 the above comments of the United States Telecom Association was delivered via the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.

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